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JUDGE COTE

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

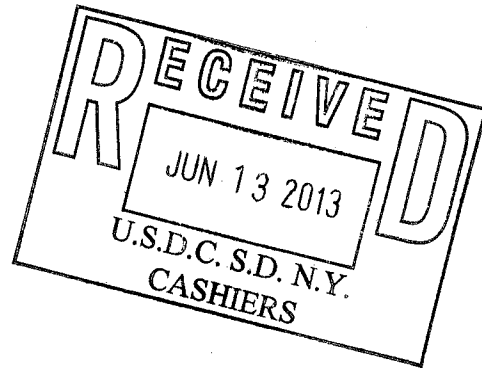
BLACKHEART RECORDS GROUP, INC.

Plaintiff

— against —

HOT TOPIC, INC. AND BLACKHEART CLOTHING
COMPANY, LLC,

Defendants.



Civil Action No. _____

COMPLAINT AND JURY DEMAND

Plaintiff BLACKHEART RECORDS GROUP, INC. (“Blackheart”), through its undersigned attorneys, Baker Hostetler, LLP, complain of defendants Hot Topic, Inc. (“Hot Topic”) and Blackheart Clothing Company, LLC (“BCCL”), as follows:

Nature of the Action

1. This is a straightforward action for trademark infringement, dilution, unfair competition and false advertising, all in violation of the laws of the United States and the State of New York. Defendant Hot Topic, who previously purchased and distributed products—including clothing—

made by Blackheart and featuring Blackheart's famous owner, Rock N' Roll legend Joan Jett, willfully and knowingly sought to co-opt the Blackheart name and trademark intending to profit from consumer confusion, Blackheart's well-known brand and Jett's well-known persona.

Jurisdiction and Venue

2. Blackheart's claims are predicated on the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051-1141, and under the statutory and common law of the State of New York. Subject matter jurisdiction over this action is conferred upon this Court by 15 U.S.C. §1121 and 28 U.S.C. §§ 1331 and 1338 (a) and (b). This Court also has diversity jurisdiction under 28 U.S.C. § 1332 because Blackheart is a citizen of New York and Defendants are citizens of California and Delaware and the amount of controversy exceeds \$75,000, exclusive of interest and costs. Additionally, the Court has supplemental jurisdiction over Blackheart's state-law claims under 28 U.S.C. § 1367.

3. Venue in this District is proper under 28 U.S.C. § 1391 (b) and (c).

4. This Court has personal jurisdiction over Defendants under New York Civil Practice Law and Rules 301 and 302(a) because Defendants do business and solicit business in this District, regularly solicit business in New York, offer goods under the infringing trademark to customers in this District, Defendant Hot Topic is registered to do business in this District, and Blackheart is being harmed in this District.

Parties

5. Plaintiff Blackheart Records Group, Inc. ("Blackheart") is a corporation organized and existing under the laws of the state of New York, with a principal place of business in the State

of New York. For all purposes herein, Blackheart is the successor in interest to Blackheart Records, Inc. (“BRI”), and as used herein the term “Blackheart” shall be deemed to include BRI.

6. Upon information and belief, Defendant Hot Topic, Inc. (“Hot Topic”) is a corporation organized and existing under the laws of California and is registered to do business in New York.

7. Upon information and belief, Defendant Blackheart Clothing Company, LLC (“BCCL”) is a limited liability company organized and existing under the laws of Delaware.

Joan Jett, Kenneth Laguna and the Creation of Blackheart

8. In 1973, at the age of 15, Joan Jett formed an all-female punk rock band called The Runaways, which also featured well known musicians Cherie Currie and Lita Ford. The Runaways rose to prominence as a punk rock band in the 1970s. The Runaways have been the subject of a variety of books and movies, most recently a film called “The Runaways” featuring Kristen Stewart as Jett and Dakota Fanning as Currie. Jett and Kenneth Laguna were executive producers of that film.

9. When The Runaways broke up, Jett worked and recorded with punk rock group The Germs and members of The Sex Pistols.

10. In the late 1970s, while working on a movie based on The Runaways, Jett met Kenneth Laguna. Laguna, who was a performer or writer for over 50 Top-40 hits by 1972, worked with and wrote music for recording artists such as Greg Kihn, Darlene Love, Bill Medley, and others. Laguna also wrote music for and/or was a member of bands such as Tommy James & The Shondelles and The Ohio Express.

11. Joan Jett and Kenneth Laguna formed the musical group “Joan Jett and the Blackhearts.” The name Blackhearts was coined by Jett and Laguna for its meaning—“Blackheart” means

“loner” in Jamaican nautical lingo—and also for its symbol. The black heart was used to symbolize Jett’s heart, along with the black color most closely associated with her brand.

12. Because of Jett’s notoriety as a punk rock artist with The Runaways, every major record label refused to sign or release the music of Joan Jett and the Blackhearts. After receiving dozens of rejections, Jett and Laguna started their own recording company and called it “Blackheart Records.”

13. In 1984, Blackheart applied to register “Blackheart Records” with the United States Patent and Trademark Office (the “USPTO”). The USPTO granted that application and issued Registration No. 1,319,119 for “Blackheart Records,” which has remained a federally registered trademark since 1985. Registration No. 1,319,119 covers recorded music.

14. In 2005, Blackheart applied to register “Blackheart Records Group” with the the USPTO. The USPTO granted that application and issued Registration No. 3,210,496 (together with Registration No. 1,319,119, the “Blackheart Registered Marks”) for “Blackheart Records Group,” which has been a federally registered trademark since 2005. Registration No. 3,210,496 covers recorded music.

15. Blackheart’s first album—which was Jett’s first album—had a picture of a black heart next to Jett:



16. Since the release of this album, the terms “Blackheart,” “Blackhearts,” “Blackheart Records” and “Joan Jett and the Blackhearts,” as well as the design element of a black heart has continued to be used with products and services associated with Jett and Blackheart.

Continued Growth of Blackheart

17. Joan Jett and the Blackhearts quickly became a part of the national consciousness, as they had a string of hits including *Bad Reputation*, *I Love Rock N’ Roll*, *Crimson and Clover*, *I Hate Myself for Loving You*, *Do You Want to Touch Me*, *Light of Day*, *Love Is All Around*, and *Little Liar*.

18. Jett, often referred to as the “Queen of Rock N’ Roll,” is one of only two women guitarists named on Rolling Stone’s list of the top 100 guitarists of all time.

19. The Joan Jett and the Blackheart’s recording of *I Love Rock N’ Roll* was ranked by Billboard Magazine as the 56th most popular song of all time, and *Bad Reputation* was ranked the 29th best hard rock song of all time by VH1.

20. Songs by Joan Jett and the Blackhearts have been featured in major motion pictures since the 1980s, including films such as *Light of Day* (in which Jett co-starred with Michael J. Fox), *Days of Thunder* (featuring Tom Cruise), *Flashdance*, *Charlie’s Angels*, *Wayne’s World 2*, *Monster*, *Dazed & Confused*, *Striptease*, *Tank Girl*, *10 Things I Hate About You*, *Shrek* and more recently, *Bad Teacher*, *Easy A*, *Kick-Ass* and *Baby Mama*.

21. Songs by Joan Jett and the Blackhearts are featured as theme songs for television shows and specials, including *Freaks & Geeks*, *American Chopper*, and *Miami Ink*. Their cover of *Love is All Around* (the theme song from *The Mary Tyler Moore Show*) became the theme song

of the NCAA women's basketball tournament. Since 2006, the composition *I Hate Myself for Loving You* has been the theme song for NBC's Sunday Night Football.

22. In 2000, Jett performed on Broadway in *The Rocky Horror Show*.

23. Since 1980, all of the recordings by Joan Jett and the Blackhearts have been on the Blackheart's label, Blackheart Records. After the first album, the commercial recordings were released under the performing name "Joan Jett and the Blackhearts," with the following album covers being demonstrative:



24. Likewise, the “Blackheart Records” name and design were used on the recordings featuring Joan Jett and the Blackhearts. This included instances even where the recordings were distributed by larger companies, such as EPIC, CBS, and Warner Brothers:



25. Since the 1980s, Blackheart has continuously and prominently used the name and trademark “Blackheart” as a trademark in connection with music performances, and distributing music and audiovisual works, such as vinyl records, cassette tapes, CDs and DVDs.

26. Since the 1980s, Blackheart has used the name and trademark “Blackheart” in connection with merchandise surrounding its artists, including tee shirts and other materials.

27. Blackheart continues to use the Blackheart Registered Marks and the term “Blackheart” and images of a black heart shape in a variety of ways and does so with long term and short term projects, such as “Blackheart Records,” “Blackheart Records Group,” “Joan Jett and the Blackhearts,” “The Blackhearts,” “Blackheart Clothing,” “Blackheart Production,” “Blackheart Music,” “Blackheart Distribution Group” (a corporation from 1992-1997), and “Blackheart Jeans” (collectively, the “Blackheart Family of Marks”). The Blackheart Family of Marks also includes stylized marks, including certain design elements—notably a heart, which is either solid black, black with a white outline, or white with a black outline, such as those below:



28. Although Joan Jett and the Blackhearts has always been the best-known artist working with Blackheart, in the 1990s, Blackheart produced, promoted and distributed the music of other artists. The list of musicians that Blackheart produced, promoted and distributed music for includes The Chemical Brothers, Metal Church, Big Daddy Kane, Professor Griff, The

Eyeliners, Girl in a Coma, The Vacancies, The Dollyrots and The Cute Leppers. Blackheart's name and logo has been included on the products and promotional material for these bands.

29. Besides the musical products, Blackheart's Family of Marks has been used in connection with the promotion and distribution of related merchandise, including apparel, jewelry and accessories. These are the natural outgrowth of the music industry. Further, Blackheart's Family of Marks has been featured on those products. Blackheart's Family of Marks also has been used in connection with other projects with which it is affiliated, including the aforementioned recent movie "The Runaways."

30. For instance, Blackheart promotes and offers for sale clothing and accessories which both feature the artists and projects with which it is affiliated, such as:





31. Blackheart also sells apparel that features the Blackheart Family of Marks including:





32. In the eyes of the public, in connection with music and ancillary goods and services, the word and trademark “Blackheart” has become inextricably intertwined with Blackheart, Joan Jett and the Blackhearts, and Jett herself.

33. Because of the extensive sales, unsolicited media coverage, advertising and promotion in connection with a variety of goods and services of the Blackheart Family of Marks, and the consistent use of the term “Blackheart,” the Blackheart Family of Marks continues to be associated with Blackheart, Jett, and Joan Jett and the Blackhearts. Third-party products include

apparel, promotional materials, books and even toys, such as a Hot Wheels tour bus, a Joan Jett doll by Mattel (which has the Blackheart design on the doll's shirt), a tee shirt (which includes the Blackheart design around the band name), and buttons:

